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EASTMAN KODAK COMPANY

**UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

DR SYSTEMS, INC., a California  
corporation,

Plaintiff,

v.

EASTMAN KODAK COMPANY,

Defendant.

AND RELATED COUNTER-CLAIMS.

Case No. 08 cv669 (BLM)

**JOINT CASE MANAGEMENT STATEMENT**

Date: June 19, 2008

Time: 1:30 p.m.

Chambers of Hon. Barbara L. Major

DR Systems, Inc. ("DR Systems") and Eastman Kodak Company ("Kodak"), by and through their respective counsel, hereby submit this Joint Discovery Plan.

### **NATURE OF THE CASE**

This case presents federal claims and counter-claims arising under 28 U.S.C. §§ 1331 and 1338. DR Systems brought this Declaratory Judgment action claiming its reasonable apprehension of suit related to Kodak's assertion of United States Patent No. 5,414,811 entitled "Method and Apparatus for Controlling Rapid Display of Multiple Images From a Digital Image Database" (the '811 patent). Kodak counter-claimed, asserting that the '811 patent is valid and that DR Systems' sale and offer for sale of products identified in its Counter-Claims constitute infringement of the '811 patent. DR Systems contends there is no infringement and has asserted that the '811 patent is invalid and is unenforceable.

### **SUBJECTS OF DISCOVERY**

The material factual and legal issues which must be resolved and require discovery are: (1) validity of the '811 patent, (2) infringement of the '811 patent by DR Systems, (3) whether the '811 patent is enforceable, (4) whether the alleged infringement was willful, (5) laches and estoppel, and (6) the amount of damages, if any, which would be sufficient to compensate Kodak for any infringement that occurred.

### **DISCOVERY PLAN**

The parties, through counsel, having conferred by telephone in accordance with Rule 26(f) Fed. R. Civ. P., jointly propose the following schedule:

<b>Event</b>	<b>Proposed Dates</b>
Exchange of Initial Disclosures Pursuant to Fed.R.Civ.P. 26(A)(1)	June 12, 2008
Disclosure of Asserted Claims and Preliminary Infringement Contentions and accompanying document production [Pat. L.R. 3.1-3.2]	July 3, 2008
Preliminary Invalidity Contentions and accompanying document production [Pat. L.R. 3.3-3.4]	September 2, 2008

Event	Proposed Dates
Exchange of Proposed Terms and Claim Elements for Construction	September 9, 2008
Simultaneous Exchange of Preliminary Claim Constructions and Preliminary Identifications of Extrinsic Evidence [Pat. L.R. 4.1.a-b.]	September 16, 2008
Deadline to Amend Pleadings	September 30, 2008
Simultaneous Exchange of Responsive Claim Constructions [Pat. L.R. 4.1.c-d.]	September 30, 2008
Filing of Joint Claim Chart, Worksheet and Hearing Statement [Pat. L.R. 4.2]	October 14, 2008
Completion of Claim Construction Discovery [Pat. L.R. 4.3]	November 12, 2008
Opening Claim Construction Briefs [Pat. L.R. 4.4.a.]	November 24, 2008
Responsive Claim Construction Briefs [Pat. L.R. 4.4.b]	December 10, 2008
Claim Construction Hearing [Pat. L.R. 4.5]	January 15, 2009
Disclosure of Advice of Counsel [Pat. L.R. 3.8]	<p><b>Kodak's Position:</b> 30 days after issuance of Claim Construction Order in accordance with Patent Local Rule 3.8.</p> <p><b>DR Systems' Position:</b> Disclosure deferred until 30 days after the close of fact discovery, or until such time as Kodak makes a threshold showing of "objective recklessness" under the new willfulness standard of <u>In re Seagate Tech.</u>, 2007 U.S. App. LEXIS 19768 (Fed. Cir. August 20, 2007), in accordance with Judge Stormes' ruling in DR v. Fuji, et al at Defendants' request which superseded PLR 3.8)</p>
Close of Fact Discovery	90 days after issuance of Claim Construction Order

Event	Proposed Dates
Exchange of Expert Reports	120 days after issuance of Claim Construction Order
Close of Expert Discovery	165 days after issuance of Claim Construction Order

The parties agree that the resultant Scheduling Order can be modified only by order of the judge, or the magistrate judge if so authorized by the judge, and only upon a showing of good cause or by agreement of the parties.

The parties agree that the limitations on discovery imposed by the Federal Rules of Civil Procedure should be applied in this case.

### **CLAIM CONSTRUCTION HEARING**

At this time, the parties do not anticipate presenting live testimony at the Claim Construction Hearing.

### **ELECTRONIC DISCOVERY**

The parties have discussed the production and exchange of electronic discovery and agree that each party's Electronically Stored Information (ESI) will be copied from Active/Archived email, shared network drives and active remote devices such as laptops and portable drives/media. The parties further agree that the parties will not be required to produce less-accessible ESI such as Backup Tapes/Data, Legacy Systems/Data, Voice/IM/PDA Data, and other data compilations, but that the parties will identify any such ESI that is responsive to a discovery request and undertake all reasonable efforts to make such ESI available for inspection. Files in native form will ordinarily not be produced, but counsel agree to negotiate in good faith regarding production in native form of ESI if the requesting party can demonstrate that relevant information does not appear in the TIF images produced or that relevant metadata may exist. Certain types of ESI cannot be produced as a TIF image. These will be produced in their native form if responsive to a discovery request.

**PROPOSED PROTECTIVE ORDER**

The parties have exchanged and discussed the terms of an agreed proposed Protective Order as set forth in the Local Rules to protect confidential information of the parties and intend to file a stipulated Proposed Protective Order with the Court shortly.

Dated: June 10, 2008

JACZKO GODDARD LLP

NIRO SCAVONE HALLER & NIRO

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Allison H. Goddard  
Attorneys for Plaintiff and  
Counterdefendant  
DR SYSTEMS, INC.

Dated: June 10, 2008

SCHIFF HARDIN LLP

By: s/W. Paul Schuck  
W. Paul Schuck  
Attorneys for Defendant and  
Counterclaimant  
EASTMAN KODAK COMPANY

**Certificate of Service**

The undersigned hereby certifies that all below counsel of record were served the 10th day of June, 2008, with a copy of **JOINT CASE MANAGEMENT STATEMENT** via electronic email means:

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